

II. REMARKS

Formal Matters

Claims 12-16 and 20-22 are pending after entry of the amendments set forth herein.

Claims 1-11 and 17-19 are canceled without prejudice to renewal, without intent to acquiesce to any rejection, and without intent to surrender any subject matter encompassed by the canceled claims. Applicants expressly reserve the right to pursue any canceled subject matter in one or more continuation and/or divisional applications.

Rejection under 35 U.S.C. §103(a)

Claims 12-16 and 20-22 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Reynolds (U.S. Patent no. 5,015,628; "Reynolds") in view of Monier-Faugere et al. ((2000) Cecil Textbook of Medicine, 21st Ed., Vol. 166, Ch. 266, pages 1409-1414; "Monier-Faugere").

Applicants claim a method of treating hyperphosphatemia. This means that abnormally high levels of phosphate in a patient's blood are reduced.



Blood phosphate levels go down

Reynolds teaches compounds which "significantly increase the absorption of calcium phosphate and iron in the gut." (Col. 8, lines 29-31) When more of the phosphate in the food in the patient's gut is absorbed, the phosphate levels in the patient's blood go up.



Blood phosphate levels go up

Thus, the compounds taught by applicants have the opposite effect from the compounds taught by Reynolds. Increasing phosphate levels is useful to treat diseases such as osteoporosis (see Reynolds

at col. 8, line 34). However, some patients do not need to increase or need to avoid increasing their phosphate levels because their phosphate levels are abnormally high. Patients with abnormally high phosphate levels need to reduce their phosphate levels using applicants' compounds. The compounds of Reynolds would increase their phosphate levels further and make their condition worse.

Monier-Faugere does not cure the deficiency of Reynolds. Monier-Faugere merely discusses renal osteodystrophy, and does not teach toward applicants' claimed method or peptidic compounds. Further, there is nothing in Monier-Faugere that would motivate a person of ordinary skill in the art to combine the teachings of Monier-Faugere with those of Reynolds. Even if one did combine the teachings of Monier-Faugere with the teachings of Reynolds, one would not arrive at the instant method as claimed.

In view of the above it can be understood that Reynolds teaches away from applicants' invention. **Reynolds teaches treating diseases which are treated by increasing phosphate levels. Applicants claim a method which decreases phosphate levels.** In view of such reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number BEAR004.

Respectfully submitted,
BOZICEVIC, FIELD & FRANCIS LLP

Date:

16/June/04

By:

Karl Bozicevic
Registration No. 28,807

BOZICEVIC, FIELD & FRANCIS LLP
200 Middlefield Road, Suite 200
Menlo Park, CA 94025
Telephone: (650) 327-3400
Facsimile: (650) 327-3231